

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

DC CRIMINAL APPEAL NO. 21 OF 2022

(Originating from Criminal Case No. 51 of 2021 of Mpwapwa District at Mpwapwa)

ISSA VUMILIA KISAGASIAPPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

Dated: 23/6/2022

BEFORE: MASAJU, J

The Appellant, Issa Vumilia Kisagasi, was charged with, and convicted of RAPE contrary to sections 130 (1) (2) (a) and 131 (1) of the Penal Code, [Cap 16 RE 2019] before the District Court of Mpwapwa and sentenced to serve thirty (30) years imprisonment minus the five (5) months he had already spent in remand prison pending his trial, hence the appeal against conviction and sentence that was meted against him.

The Appellant's Petition of Appeal is made of five (5) grounds of appeal including the grounds that the prosecution case before the trial Court was not proved beyond reasonable doubt and that the Appellant was not unmistakably identified at the scene of crime.

The appeal was heard in the Court on the 1st day of June, 2022 in the presence of the layman Appellant who just adopted his grounds of appeal to form submissions in support of the appeal in the Court stating that he did not commit the offence but he had been framed up. He prayed the court to allow the appeal.

The learned State Attorney, Ms. Neema Taji, for the Respondent Republic did not contest the meritorious appeal reasoning that the prosecution case was not proved beyond reasonable doubt before the trial Court on the following reasons thus,


That the Appellant was not identified at the scene of crime. This is because the victim of crime (PW1) testified that the Appellant was allegedly her sister in law's grandson but she did not clarify the name of the alleged sister in law of hers. She then testified that the Appellant was the son of one Thadei. But, according to the charge sheet and the record of

proceedings the Appellant is one Issa Vumilia Kisagasi. The name Thadei features nowhere in his name. That being the case, though the offence was allegedly committed during day time, there was a possibility of mistaken identification of the Appellant by the alleged victim of crime who was seventy three (73) years old by then.

The Respondent Republic reasoned further that, there was confusion on the identity of the victim of crime. The charge sheet and the record of proceedings reveal that the victim of crime was one Magreth Kandido but PF3 (ExhibitP1) was that of one Magreth Malewa. This creates doubt as to whom was medically examined by the Doctor (PW2) and as to whether the said Magreth Malewa is one and the same Magreth Kandido. That, the doubt should benefit the Appellant as so rightly argued by the Appellant in his 2nd ground of appeal that the prosecution case against him before the trial court was not proved beyond reasonable doubt.

The court appreciates the workmanship by the learned State Attorney, Ms. Neema Taji, for the Respondent Republic. Indeed, the prosecution case against the Appellant before the trial court was not proved beyond reasonable doubt as so rightly argued by both the Appellant and the Respondent Republic whose reasoning I hereby agree with *in toto*.

Thus, the meritorious appeal is hereby allowed accordingly. The conviction and sentence of thirty (30) years imprisonment, respectively, are hereby quashed and set aside accordingly. The Appellant shall be released forthwith from prison unless there was a lawful cause.



GEORGE M. MASAJU
JUDGE
23/6/2022